

**Taiping Poly (M) Sdn Bhd v Wong Fook Toh, Wong Che Leong
and Wong Su Fah (t/a Kong Wah Trading Co)**

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J03–142 OF
2004

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HELILIAH, KN SEGARA AND ABU SAMAH JJCA
7 APRIL 2010

Civil Procedure — Interest — Judgment interest — Failure to award

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*Trade Marks — Infringement of registered trade mark and passing off —
Assessment of damages — Whether damages assessed entirely and exclusively on loss
of sales or on net loss of profits — Whether there was error in assessment — Whether
appellant entitled to sum awarded for goodwill*

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The appellant, the registered user of the HAITOP trademark ('the registered trademark'), which was used in respect of luggage and bags of various kinds, filed a writ action against the respondent for infringement of its registered trademark and/or passing off of the said trademark. It was the appellant's case that the respondent, a partnership carrying on the business of purchasing and selling of, inter alia, bags of various kinds, had used a trademark which was deceptively similar or confusingly similar to the appellant's trademark without its consent. After a full trial, the court held the respondent liable, granted the appellant the injunctions it had prayed for and ordered an enquiry for assessment of damages. The senior assistant registrar assessed the damages based on the loss of sales for the years 1995 and 1996, interest and costs. Being dissatisfied with this assessment of damages the respondent appealed to a judge in chambers who held that that the loss suffered by the appellant arising out of the infringement and passing off of its trademark should be RM14,759 being the net loss of profits out of a total turnover or loss of sales for the years 1995 and 1996 and not the total loss of sales as contended by the appellant. The judge also awarded a sum of RM50,000 to the appellant for goodwill. This was the appellant's appeal against the judge's assessment of damages. The respondent cross-appealed against the sum of RM50,000 awarded for goodwill, on the grounds that the appellant had not prayed for such relief. The appellant contended that the object of damages was to compensate the injured party for loss which it had actually sustained as a result of the respondent's breach and that such a loss was based on the loss of sales or diversion of customers from its business to the respondent's business. The respondent contended that the appellant wholly erred in principle by equating loss of sales with loss of profits in its claim for damages because the former did not take into account the cost of production and other expenditures and expenses, which

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A had to be deducted before arriving at the net profits. The court was thus faced with two opposing methods that would compensate or put the injured party in the same position he would have been in if he had not sustained the wrong. The issue for consideration in this appeal was thus whether the damages should be assessed based entirely and exclusively on the loss of sales.

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Held, dismissing the appeal with costs and dismissing the cross-appeal with no order as to costs:

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(1) Loss of sales merely constituted evidence used as a means of ascertaining the damages suffered by an injured party and there were cogent reasons why loss of sales could not be equated with damages actually sustained by the injured party. One of those reasons was the fact that the injured party was not entitled to damages for sales to persons who had not been misled. As such it was unsafe to rely wholly and exclusively on the loss of sales to arrive at the damages, when there was other evidence such as the net profits, in this case, to show that the loss of sales was not the damages which the injured party had actually sustained. On the evidence, the judge in chambers had correctly ascertained the damages due to the appellant (see paras 23 & 26).

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(2) The quantum of award in respect of goodwill was essentially a matter of discretion depending on the facts of the particular case. As the judge had taken into account the reputation of the appellant and the length of time of infringement, there was no justification to vary the amount of damages on goodwill (see para 29).

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(3) An interest is ordinarily allowed on the judgment sum and since there was no order made on interest, the court would award judgment interest from the date of judgment until the date of realisation (see para 30).

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[Bahasa Malaysia summary]

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Perayu, pengguna berdaftar tanda dagangan HAITOP ('tanda dagangan berdaftar'), yang digunakan berkaitan bagasi dan beg pelbagai jenis, memfailkan tindakan writ terhadap responden untuk pelanggaran tanda dagangan berdaftar dan/atau kelirupaan tanda dagangan tersebut. Ia adalah kes perayu bahawa responden, syarikat perkongsian yang menjalankan perniagaan membeli dan menjual, antara lain, beg pelbagai jenis, telah menggunakan tanda dagangan yang kelihatan sama atau yang mempunyai persamaan yang mengelirukan dengan tanda dagangan perayu tanpa kebenarannya. Selepas perbicaraan penuh, mahkamah memutuskan responden bertanggungjawab, memberikan perayu injunksi-injunksi yang dipohonnya dan memerintah siasatan untuk taksiran ganti rugi. Penolong kanan pendaftar menaksir ganti rugi berdasarkan kerugian jualan untuk tahun 1995 dan 1996, faedah dan kos. Tidak berpuashati dengan penaksiran ganti rugi responden merayu kepada hakim dalam kamar yang memutuskan bahawa

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kerugian yang dialami oleh perayu berbangkit daripada pelanggaran dan kelirupan tanda dagangannya patut ditaksir sebanyak RM14,759 sebagai kerugian bersih keuntungan daripada pusing ganti semuanya atau kerugian jualan untuk tahun 1995 dan 1996 dan bukan kerugian jualan sepenuhnya seperti yang diujahkan oleh perayu. Hakim juga mengawardkan RM50,000 kepada perayu untuk nama baik. Ini adalah rayuan perayu terhadap penilaian ganti rugi hakim tersebut. Responden merayu balas terhadap jumlah RM50,000 yang diawardkan untuk nama baik, atas alasan bahawa perayu tidak memohon untuk relief sedemikian. Perayu berhujah bahawa objek ganti rugi adalah untuk memberi pampasan kepada pihak yang mengalami kerugian yang mana telah dialami akibat kemungkiran responden dan bahawa kerugian sedemikian adalah berdasarkan kerugian jualan atau penyimpangan pelanggan-pelanggannya daripada perniagaannya kepada perniagaan responden. Responden berhujah bahawa perayu tersilap secara keseluruhan atas prinsip apabila menyamakan kerugian jualan dengan kerugian keuntungan di dalam tuntutan untuk ganti rugi kerana perayu tidak mengambilkira kos produksi dan perbelanjaan-perbelanjaan yang lain, yang terpaksa dikurangkan sebelum mendapat keuntungan bersih tersebut. Mahkamah oleh itu berhadapan dua kaedah bertentangan yang akan memberikan pampasan atau meletakkan pihak yang kerugian di dalam kedudukan yang sama seperti sebelumnya jika dia tidak menanggung kerugian tersebut. Isu untuk pertimbangan di dalam rayuan ini oleh itu adalah sama ada ganti rugi patut ditaksir secara keseluruhan dan eksklusif berdasarkan kerugian jualan.

Diputuskan, menolak rayuan, dengan kos dan menolak rayuan balas tanpa perintah untuk kos:

- (1) Kerugian jualan hanya membentuk keterangan yang digunakan sebagai cara memastikan ganti rugi yang dialami oleh pihak yang kerugian dan terdapat alasan-alasan meyakinkan mengapa kerugian jualan tidak boleh disamakan dengan ganti rugi yang ditanggung sebenarnya oleh pihak yang kerugian. Salah satu daripada alasan tersebut adalah fakta bahawa pihak yang kerugian tidak berhak kepada ganti rugi untuk jualan kepada orang-orang yang telah ditipu. Oleh itu ia adalah tidak selamat untuk bergantung sepenuhnya dan secara eksklusif ke atas kerugian jualan untuk mencapai kepada ganti rugi tersebut, apabila terdapat keterangan lain seperti keuntungan bersih, dalam kes ini, untuk menunjukkan bahawa kerugian jualan bukan ganti rugi yang mana ditanggung sebenarnya oleh pihak yang kerugian. Atas keterangan, hakim dalam kamar telah secara betul memastikan ganti rugi yang kena dibayar kepada perayu (lihat perenggan 23 & 26).
- (2) Kuantum award berkaitan nama baik pada dasarnya adalah perkara budi bicara bergantung ke atas fakta kes tertentu. Memandangkan hakim telah mengambilkira reputasi perayu dan tempoh masa pelanggaran,

- A tidak terdapat justifikasi untuk mempelbagaikan jumlah ganti rugi ke atas nama baik (lihat perenggan 29).
- (3) Faedah secara biasanya dibenarkan atas jumlah penghakiman dan memandangkan tidak terdapat perintah dibuat atas faedah, mahkamah akan mengawardkan penghakiman faedah dari tarikh penghakiman sehingga tarikh realisasi (lihat perenggan 30).]
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Notes

- For cases on infringement of registered trademark and passing off generally, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2019–2043.
- C For cases on interest generally, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3955–4021.

Cases referred to

- D *AG Spalding & Bros v AW Gamage Ltd* (1915) 32 RPC 273 (refd)
AG Spalding & Bros v AW Gamage Ltd (1918) 35 RPC 101, CA (refd)
Draper v Trist and Tristbestos Brake Linings Ltd (1939) 56 RPC 429 (refd)
General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd [1975] 1 WLR 819, HL (refd)
- E *Lal-Kamlapat & Juggilal-Kamlapat Mills of Cawnpore v Swadeshi Company Ltd* (1928) 46 RPC 74, PC (refd)
PC Products Ltd v Wilfred Doulton [1957] RPC 199 (refd)
Pneumatic Tyre Co Ltd v Puncture Proof Pneumatic Tyre Co Ltd (1899) 16 RPC 209 (refd)
- F *Rogers v Nowill* (1847) 5 CB 109 (refd)
Wembley Gypsum Products Sdn Bhd v MST Industrial Systems Sdn Bhd [2007] 7 MLJ 193, CA (refd)

Appeal from: Civil Suit No MT2–22–90 of 1996 (High Court, Johor Bahru)

- G *Kenneth St James (SY Wong with him) (Michael Chai & Co) for the appellant. Wong Kim Fatt (Chang Tau Sian with him) (Henry Soong & Chang) for the respondent.*

Abu Samah JCA:

- H [1] The appellant's cause of action against the respondent is based on infringement of its registered trademark 'HAITOP' and/or passing off of the said trademark. The said trademark was registered on 27 August 1992 under the trademark registration No 92/06073 in class 18 in respect of, among
- I others, travel, hand, luggage and school bags, purse, harvest set, brief case and roller bags.
- [2] The respondent is a partnership carrying on the business of purchasing and selling of, inter alia, bags of various kinds.

[3] The appellant alleged that the respondent has from the date unknown to it and still is, selling and/or offering to sell bags of various kinds under a trademark 'HIGHTERTOP' which is deceptively or confusingly similar to the appellant's trademark without its consent. A

[4] By way of a writ action filed on 3 May 1996 the appellant claimed against the respondent reliefs in the form of prohibitory and mandatory injunctions; and for an enquiry as to damages or at the appellant's option, for an account of profits and for payment of all sums found due upon taking such enquiry or account and interest thereon. B C

[5] After a full trial, Zainun bt Ali J (as she then was) held the respondent liable, granted the injunctions as prayed for and ordered an enquiry for assessment of damages. There was no appeal against the said decision. D

[6] The enquiry for assessment of damages was held before the learned senior assistant registrar. On 18 March 2004 she assessed the damages as follows:

- (a) RM1,139,655.14 for the year 1995; E
- (b) RM1,014,771.65 for the year 1996;
- (c) RM37,400 for expenses during the hearing;
- (d) interest on RM2,154,426.79 at 8%pa from 3 May 1996 to the date of full realisation; and F
- (e) costs.

[7] Being dissatisfied, the respondent appealed to the judge in chambers. On 31 May 2004 Kang Hwee Gee J (as he then was) allowed the appeal with costs, set aside the order of the learned senior assistant registrar and substituted it with the following order: G

- (a) damages in the sum of RM14,759 for loss of net profits in respect of infringement for the years 1995 and 1996; and H
- (b) damages in the sum of RM50,000 for loss of goodwill.

[8] The learned judge was of the view that the loss suffered by the appellant arising out of the infringement and passing off of its trademark should be the net loss of profits and not the loss of sales as contended by the appellant. I

[9] The appeal before us is against the decision of the learned judge in respect of quantum only.

A [10] The only issue in this appeal is this. How do you determine the damages due to the appellant arising out of the infringement and passing off of its trademark by the respondent.

B [11] Learned counsel for the appellant contended that the object of damages is to compensate the injured party for loss or injury which it has sustained as a result of the respondent's breach. He referred to us a number of cases on the general principles on assessment of damages. The general rule is as laid down in *General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd* [1975] 1 WLR 819 per Lord Wilberforce in delivering the judgment of the House of Lords at p 824 which said:

C The general rule at any rate in relation to 'economic' torts is that the measure of damages is to be, so far as possible, that sum of money which will put the injured party in the same position as he would have been in if he had not sustained the wrong (*Livingstone v The Rawyards Coal Company* (1880) 5 App Cas 25 per Lord Blackburn at p 39).

D [12] In *AG Spalding & Bros v AW Gamage Ltd* (1915) 32 RPC 273, Lord Parker of Waddington held that the damages that the plaintiffs were entitled to were 'such damages as naturally flow from their unlawful act, and that there is no artificial limitation in the case of a passing off action'. That damages must be damages which the plaintiffs actually sustained. In *AG Spalding & Bros v AW Gamage Ltd* (1918) 35 RPC 101 the Court of Appeal had to decide what sort of damages that the plaintiffs were entitled to recover from the defendant for passing off their goods.

F Sweaden Eady LJ at p 117 said:

G ... the defendants are liable in my opinion, for all loss actually sustained by the plaintiffs which is the natural and direct consequence of the unlawful acts of the defendants: this will include any loss of trade actually suffered by the plaintiffs, either directly from the acts complained of or properly attributable to injury to the plaintiffs' reputation, business, goodwill, and trade and business connections caused by the act complained of; in other words, such damages as flow directly, and in the usual course of things; from the wrongful acts, and excluding any speculative and unproven damage. See *The United Horse-shoe and Nail Company Limited v John Steward & Co* (1888) 13 App Cas 401; LR 13 P & D 191; *Pneumatic Tyre Co Ltd v Puncture Proof Pneumatic Tyre Co Ltd* (1899) 16 RPC 209.

H [13] Apart from these general principles, cases which specifically decide on the mechanics of ascertaining damages actually sustained by the injured party are not easy to find. There is no single foolproof and universally accepted method for determination of damages suffered by the injured party arising out of infringement and passing off of its trademark. There is no hard and fast rule in such actions: *AG Spalding & Bros v AW Gamage Ltd* (1918) 35 RPC 101 at

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p 109 or 'any cut and dried' rule which can be laid down by a court of law for the estimation of damages in a case like this: *Lal-Kamlapat & Juggilal-Kamlapat Mills of Cawnpore v Swadeshi Company Ltd* (1928) 46 RPC 74 at p 79. It depends on the facts of each case. It is basically facts driven.

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[14] The appellant herein elected to prove the damages sustained by it arising out of the infringement and passing off of its trademark based on the loss of sales or diversion of customers from its business to the respondent's business; and not based on loss of profit, as contended by the respondent. The learned senior assistant registrar agreed and accepted that the loss of sales was the damages actually sustained by the appellant.

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[15] The respondent accepted the appellant's figures for the loss of sales for the years 1995 and 1996 as correct but contended that the loss of sales is not loss of profit. It cannot be equated with loss of profits as the cost components and all expenditures and income tax must first be deducted before arriving at the net profits. The appellant's case is that it cannot give the correct figures for the profits for the HAITOP brand, but the respondent submitted that this is unbelievable as the appellant had shown the net profits in its own audited accounts for the years 1995 and 1996. What the learned senior assistant registrar should have done was to look at the audited accounts of the appellant for the years 1995 and 1996 which showed that the net profits for 1995 and 1996 were RM26,432 and RM150,854 respectively. These net profits were for all the appellant's products including its product bearing the HAITOP brand.

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[16] Based on the appellant's audited accounts for the years 1995 and 1996 the net profits for the HAITOP brand could be extracted and established. According to the respondent, the net profits for the HAITOP brand could be computed as follows:

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(a) For year 1995

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Turnover (sales)	— RM9,179,686
Net profit	— RM26,432

Percentage of net profit of turnover:

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RM26,432 divided by RM9,179,686 x 100 = 0.28%

(b) For year 1996

Turnover (sales)	— RM13,123,390
Net profit	— RM150,854

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- A** Percentage of net profit of turnover:
RM150,854 divided by RM13,123,390 x 100 = 1.14%
- B** (c) The respondent accepts the appellant's claims in its summons (encl 64) for *loss of sales* of HAITOP brand in paras 2.4 and 2.6, in cash terms (see appeal record at pp 230 and 233).

Loss of sales for 1995: 6% (from 12%) = RM1,139,655.14
Loss of sales for 1996: 3% (from 12%) = RM1,014,771.65
- C** (d) The principal head of loss for the appellant will be the loss of business profits arising from the respondent's infringement or passing off of the HAITOP bags. Based on the appellant's own loss of sales figures (ie RM1,139,655.14 and RM1,014,771.65) in its summons in chambers,
- D** the loss of business profits of the appellant, will be at the very most, based on the above audited accounts of the appellant and Taiping Poly Marketing Sdn Bhd and their very low profit margins, as follows:
- (a) For Year 1995: RM1,139,655 x 0.28% = RM3,191
- E** (b) For Year 1996: RM1,014,771 x 1.14% = RM11,568
- RM14,759
- F** (Note for 1995: The claim or award is 357 times the profit margin of RM3,191)
(Note for 1996: The claim or award is 87 times the profit margin of RM11,568)
- G** [17] The learned judge agreed with the abovesaid computation and accordingly held that the damages actually sustained by the appellant arising out of the infringement and passing off of its trademark was RM14,759 being the net profits out of a total turnover (loss of sales) for the years 1995 and 1996.
- H** [18] The respondent contended that the appellant wholly erred in principle by equating loss of sales with loss of profits in its claims for damages without taking into account the cost of production and other expenditures and expenses.
- I** [19] The court is thus confronted with two two opposing methods of assessment of damages. The court is not concerned whether there is another method, perhaps a better method, which is more appropriate for assessment of damages in these types of cases. What needs to be decided is which of the two opposing methods that would compensate or put f the injured party in the same position as he would have been in if he had not sustained the wrong. The

respondent is only liable for all the loss actually sustained by the appellant, which is the natural and direct consequence of the unlawful acts of the respondent. See *AG Spalding & Bros v AW Gamage Ltd* (1918) 35 RPC 101 at p 117. The object is to compensate the injured party, the appellant in our case, and not to punish the wrongdoer, ie the respondent: see *Pneumatic Tyre Co Ltd v Puncture Proof Pneumatic Tyre Co Ltd* (1899) 16 RPC 209 at p 215. The burden of proving the loss is on the appellant: see *General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd* [1975] 1 WLR 819 at p 824.

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[20] The authorities relied upon by the appellant do not in fact support its proposition that damages should be assessed based entirely and exclusively on the loss of sales. In *AG Spalding & Bros v AW Gamage Ltd*, the plaintiffs claimed damages based on loss of profit. The Court of Appeal however found that the claims were so extravagant so as to be absurd and that they could not prove any damage beyond 250l, which was the amount allowed by the court.

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[21] In *Lal-Kamlapat & Juggilal-Kamlapat Mills of Cawnpore v Swadeshi Company Ltd* (1928) 46 RPC 74 the Privy Council found a falling off in the respondent's trade, which in terms of cash was about RS1,000,000 due to the pirated mark introduced on the market. It did not make an award of damages in that sum. Instead, it allowed damages at 9% of the said sum as profit. This is what Viscount Dunedin said:

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If it is assumed that the whole of the falling off was due to the use of the pirated mark, that would bring out a figure of about RS1,000,000 loss of trade and taking 9% profit on that amount it gives a figure which, put into pounds sterling, would come out at a sum of £4,500 ... Their Lordships therefore think that that is in this case the proper figure of damages.

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[22] In *PC Products Ltd v Wilfred Doulton* [1957] RPC 199, evidence was tendered to show the claimant's loss of sales as a result of infringing products in the market. There was also evidence from the infringer of the sales of his infringing product. The court did not make an award of damages based on the loss of sales but based on profits after deducting cost of material. Lord Hill Watson at p 202 said, 'I have reached the conclusion that any sum of damages awarded to the pursuers will fall to be included by them in their statement of profits and Mr O'Brien agreed with this on behalf of the pursuers'.

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[23] There are cogent reasons why loss of sales should not be equated with damages actually sustained by the injured party. The injured party is not entitled to damages for sales to persons who have not been misled: see *AG Spalding & Bros v AW Gamage Ltd* (1915) 32 RPC 273; (1918) 35 RPC 101 at para 19-031, *Draper v Trist and Tristbestos Brake Linings Ltd* (1939) 56 RPC 429.

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- A [24] *Kerly's Law of Trademarks and Trade Names*, (14th Ed), para 19-134 at p 672 makes the following observation:

B It is important to note that in assessing damages for lost sales on a compensatory basis, it will be necessary for the court to determine what proportion of the defendant's customers have been confused. The claimant is not entitled to damages for sales to persons who have not been misled, since he has suffered no loss in respect of them, and arguably, no actionable wrong has been committed in respect of sales to them. If he were to recover damages in relation to such persons, he would be over compensated. This principle distinguishes passing off and trade mark infringement from other intellectual property proceedings such as those for patent infringement, where all the defendant's activities of a given kind infringe.

[25] Sir Lord Wilfred Greene MR in *Draper v Trist and Tristbestos Brake Linings Ltd* at p 521 had this to say with regard to loss of sales or drop in sales:

D That brings me to this question. It is said on behalf of the plaintiff that he has established a drop in his sales which is evidence of damage suffered owing to this improper trading. Counsel for the defendants criticised that evidence, and claimed that the evidence showed no drop in sales referable to the improper trading, and relied upon that circumstance as disproving damage. I myself do not find any real assistance in the evidence in this case with regard to the alleged drop in sales. There are various explanations given of why that drop should have taken place, and there is a great deal of controversy about it. Personally, I find the evidence in such a state that it does not assist me one way or the other. Evidence of a general drop in sales may be valuable or may be quite valueless in cases of this kind. Similarly, evidence of no drop in sales again may be valuable or may be quite valueless. It does not in the least follow that, because there has been a drop in sales, it is necessarily due to the deceptive trading complained of, nor does it in the least follow that, because there has been no drop in sales, it is necessarily due to the deceptive trading complained of, nor does it in the least follow that, because there has been no drop in sales, therefore the deceptive trading has had no effect. Evidence of that kind is evidence which must be regarded with very great caution. Valuable though it may be in certain cases, in other cases it may be of very little value. In the present case, I do not find the evidence in such a condition with regard to that matter as to enable me to base any inference on it or to strengthen any inference by its help.

H [26] None of the cases referred to us show that the court had awarded damages sustained by the injured party based wholly and exclusively on loss of sales. Loss of sales merely constitute evidence used as a means or tool ascertain the damages actually sustained by the injured party. It cannot be equated with the damages actually sustained by the injured party. It is unsafe to rely wholly and exclusively on the loss of sales and then conclude that that is the damages sustained by the injured party, particularly where there is other evidence, such as accrued profits, as in this instant appeal, to show that the loss of sales is not the damages which the injured party had actually sustained. On the evidence before us, we agree with the way the learned judge ascertained the damages due

to the appellant. In *Wembley Gypsum Products Sdn Bhd v MST Industrial Systems Sdn Bhd* [2007] 7 MLJ 193 this court agreed with the learned judge's decision in assessing the damages due to the plaintiff based on a profit of at least 30%–35% out of the loss in the sales of its product. In that case the plaintiff sued the defendant for infringement of its registered trademarks and passing off of another mark at common law.

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GOODWILL

[27] The learned senior assistant registrar made no award of damages in respect of goodwill. This is not unexpected as there is no such prayer in appellant's summons in chambers. It is also not stated as one of the prayers in the appellant's statement of claim. It was for this reason that the respondent cross-appealed in respect of the damages for goodwill.

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[28] *Rogers v Nowill* (1847) 5 CB 109; 43 Digest 277 at p 1098 held that once one has established passing off, there is injury to goodwill and this court or the jury must assess, by the best means they can, what is a fair and temperate sum to the plaintiff for that injury. Lord Goddard LJ in *Draper v Trist and Tristbestos Brake Linings Ltd* at p 526 said:

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In passing off cases, however, the true basis of the action is that the passing off by the defendant of his good as the goods of the plaintiff injures the right of property in the plaintiff, that right of property being his right to the goodwill of his business. The law assumes, or presumes, that if goodwill of a man's business has been interfered with by the passing off of goods, damage results therefrom.

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[29] The appellant is unhappy with the sum of RM50,000 awarded for goodwill as the learned judge did not take into consideration the appellant's established reputation and the length of time of infringement and passing off committed by the respondent. It was submitted that the greater the reputation, the more vulnerable it is to damage. The quantum of award in respect goodwill is essentially a matter of discretion depending on the facts of the particular case. The appellant had not suggested any higher figure. We find that the learned judge had taken into account the reputation of appellant and the length of time of infringement. There is no justification to vary the amount of damages on goodwill.

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INTEREST

[30] Interest is ordinarily allowed on the judgment sum. As the learned judge made no order on interest there shall be an order in respect of interest as follows:

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- (a) interest of 8%pa on RM14,759 from the date of the registrar's order until full realisation; and

- A (b) interest at 8%pa on RM50,000 from the date of the learned judge's order until full realisation.

[31] For the aforesaid reasons (except for the order on interest) we dismissed the appeal with costs. As for the cross-appeal, it is also dismissed but there shall be no order as to costs. The deposit to the respondent on account of taxed costs. The deposit in respect of cross-appeal, if any, be returned to the respondent.

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Appeal dismissed with costs and cross appeal dismissed with no order as to costs.

C Reported by Kohila Nesan

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